

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT
AND ALL OTHER SEAMAN DOCUMENTS

Issued to: John J. SHADE

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1669

John J. SHADE

This appeal has been taken in accordance with Title 46 United States Code 239b and Title 46 Code of Federal Regulations 137.30-1.

By order dated 26 May 1967, an Examiner of the United States Coast Guard at San Francisco, California, revoked Appellant's seaman documents upon finding him guilty of the charge of "conviction for a narcotic drug law violation." The specification found proved alleges that while a holder of the document above described, on or about 19 September 1963, Appellant was convicted of a violation of Section 11715 of The Health and Safety Code, a narcotic drug law of the State of California.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of guilty to the charge and specification.

The Investigating Officer introduced in evidence a copy of a judgement of conviction.

In defense, Appellant offered matters in mitigation.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved by plea. The Examiner then entered an order revoking all documents issued to Appellant.

The entire decision was served on 6 June 1967. Appeal was timely filed on 21 June 1967.

FINDINGS OF FACT

On 19 September 1963, Appellant was convicted of violation of Section 11715 of the California Health and Safety Code, a narcotic drug law of the State of California, in the Superior Court in and for the City and County of San Francisco. He was sentenced to one year in the County Jail. Execution was suspended, and Appellant was placed on probation for three years.

BASES OF APPEAL

This appeal is taken from the order of the Examiner. It is submitted that since the trial court has, under California law, rescinded the conviction, no penalties or disabilities may longer flow from the original judgement.

Appearance: Appellant, pro se.

OPINION

The documents filed by Appellant on this appeal are:

- (1) a notice of appeal dated 19 June 1967, announcing that he had hired an attorney to appeal his 1963 conviction, and
- (2) a letter of no date, received by the Commander, Thirteenth Coast Guard District, on or before 1 August 1967, advising that his conviction had been rescinded by the Superior Court in California.

This second document forwarded a copy of an application filed by "Attorney for the Defendant," in the Superior Court in which the original conviction was had, for the dismissal of the original charge under Section 1203.4 of the Penal Code of California.

Apart from the other questionable aspects of this document, it is most important that while the "action" portion was prepared and dated for the signature of a Superior Court Judge, it is not signed by him. Neither is it acknowledged by the District Attorney to have been served upon him after completion.

The import of a completed action under the California Penal Code on the basic proceeding need not be considered here. The record that Appellant has presented shows only that he had filed an application, not that his application has been granted.

II

On the record here, there is also an appearance that Appellant had, in an official application to the Coast Guard, made a false denial as to his 1963 conviction. It need not be considered in this proceeding whether his action constituted a fraud in the procurement such as to have rendered his document void and the instant proceeding unnecessary.

ORDER

The order of the Examiner dated at San Francisco, California on 25 May 1967 is AFFIRMED.

W. J. SMITH
Admiral, United States Coast Guard

Commandant

Signed at Washington, D. C., this 8th day of November 196 .

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